

STATE OF NEW YORK

DIVISION OF TAX APPEALS

---

In the Matter of the Petition	:	
of	:	
<b>ALLAN CHAPIN AND JANET JOHNSON</b>	:	DETERMINATION
	:	DTA NO. 819250
for Redetermination of a Deficiency or for Refund	:	
of New York State and New York City Personal	:	
Income Taxes under Article 22 of the Tax Law and	:	
the New York City Administrative Code for the Year	:	
1998.	:	

---

Petitioners, Allan Chapin and Janet Johnson, c/o Compass Partners, 599 Lexington Avenue, New York, New York 10020, filed a petition for redetermination of a deficiency or for refund of New York State and New York City personal income taxes under Article 22 of the Tax Law and the New York City Administrative Code for the year 1998.

A hearing was held before Dennis M. Galliher, Administrative Law Judge, at the offices of the Division of Tax Appeals, 500 Federal Street, Troy, New York on August 1, 2003 at 10:45 A.M., with all briefs to be submitted by April 23, 2004, which date commenced the six-month period for the issuance of this determination. Petitioner Allan Chapin appeared *pro se* and on behalf of his wife, petitioner Janet Johnson. The Division of Taxation appeared by Mark F. Volk, Esq. (Peter B. Ostwald, Esq., of counsel).

***ISSUE***

Whether the Division of Taxation properly determined and assessed a deficiency against petitioners for underpayment of their 1998 personal income tax liability, together with penalties for late filing of their return, late payment of tax, and failure to timely pay estimated tax for such year.

***FINDINGS OF FACT***

1. Petitioners, Allan Chapin and Janet Johnson, husband and wife, filed a New York State Resident Income Tax Return (Form IT-201) for the year 1998. This return was received by the Division of Taxation (“Division”) on November 15, 1999. On their 1998 return, petitioners reported New York taxable income of \$2,384,548.00, resulting in New York State and New York City personal income taxes due thereon (before credits) in the aggregate amount of \$269,391.00, consisting of the respective amounts of \$163,342.00 (New York State) and \$106,049.00 (New York City). Petitioners reduced their New York State liability from \$163,342.00 to \$151,101.00, based on a claimed \$12,241.00 resident credit for tax paid to the State of California. Petitioners reduced their New York City liability from \$106,049.00 to \$91,620.00, based on a claimed \$14,429.00 unincorporated business tax credit. Thus, petitioners reported a total New York State and New York City personal income tax liability of \$242,721.00, at line “56” of their return, for the year 1998.

2. On their 1998 return, petitioners’ \$242,721.00 total liability was reduced by a City of New York school tax credit of \$12.00 and by a claimed estimated tax payment of \$200,000.00, thus leaving \$42,709.00 as the amount of tax they owed for 1998. Petitioners remitted such amount (\$42,709.00) on November 15, 1999 with their return.

3. The Division reviewed petitioners’ 1998 return, including its records of estimated tax payments and other payments made by petitioners for 1998. As a result of this review, the Division denied petitioners’ claimed resident credit (\$12,241.00) and claimed unincorporated business tax credit (\$14,429.00), the result of which was to increase petitioners’ 1998 total liability to \$269,391.00. The Division further concluded that petitioners’ only allowable credits and payments for 1998 totaled \$202,721.00, consisting of the New York City school tax credit of \$12.00, an estimated tax payment in the amount of \$160,000.00, and the \$42,709.00 payment

which accompanied petitioners' return. By comparing petitioners' total liability (\$269,391.00) to their total credits and payments (\$202,721.00), the Division determined that petitioners had underpaid their tax liability for 1998 by \$66,670.00.

4. On July 7, 2000, the Division issued to petitioners a Notice and Demand for Payment of Tax Due for the year 1998, assessing tax due in the amount of \$66,670.00, as set forth above, plus penalties and interest. The notice provides that "penalty and/or interest is due for failure to file or pay tax on or before the due date." Although not specifically listed, the penalties would appear to be those imposed for failure to timely file a return (Tax Law § 685[a][1]), failure to timely pay tax due (Tax Law § 685[a][2]), and failure to timely pay estimated income tax (Tax Law § 685[c]).

5. In response to petitioners' challenge to the Notice and Demand, the Division's auditor reviewed the Division's records concerning petitioners' income tax filings and payments for the year in issue, 1998, as well as for the preceding years 1997 and 1996, and the subsequent year 1999. Such review (and the changes occasioned thereby) is presented in summary fashion hereinafter:<sup>1</sup>

**1996**

Liability per return	\$261,495.00
Tax withheld	( 23,547.00)
Paid with return	( 28,495.00)
Balance due	<u>\$209,453.00</u>

The auditor eliminated the \$209,453.00 balance due for 1996 by application of the following payment amounts totaling \$209,453.00:

\$49,453.00— a payment by check, verified by Deposit Serial Number ("DSN") S7258330 as received on April 18, 1997, representing the amount originally allowed by the Division as estimated tax paid for 1996, and

---

<sup>1</sup> The amounts shown reflect petitioners' tax liability and their payments for each year, and do not include or reflect any calculations or payments with respect to interest or penalties.

\$160,000.00— a payment by check, verified by DSN S1216323 as received on April 17, 1997, originally appearing as an estimated tax payment against petitioners' liability for 1997.

**1997**

Liability per return	\$239,467.00
Payments	( 0.00)
Balance Due	<u>\$239,467.00</u>

By applying the \$160,000.00 amount, originally appearing as an estimated tax payment in petitioners' 1997 account (see above), as a payment against (and eliminating) petitioners' balance due for 1996, the full balance due for 1997 appears as unsatisfied in the auditor's calculations for 1997. However, the auditor's review recognized two payments, totaling \$80,000.00, remaining to be applied against petitioners' 1997 balance due, as follows:

\$60,000.00— a payment by check, verified by DSN S2136244 as received on September 19, 1997, and

\$20,000.00— a payment by check, verified by DSN S7308462 as received on April 28, 1998.

Application of these amounts against petitioners' \$239,467.00 balance due for 1997 reduced such balance due to \$159,467.00.

**1998**

Liability per return	\$242,721.00
Tax withheld	( 0.00)
Paid with return	( 42,709.00)
NYC school tax credit	( 12.00)
Balance Due	<u>\$200,000.00</u>

The auditor reduced the \$200,000.00 balance due by \$160,000.00, consisting of one payment by check, verified by DSN S1398929 as received on April 20, 1998, and described as "the only payment made for estimated tax purposes for 1998." Thus, the Division asserts, after this "estimated payment" reduction, an outstanding assessed tax liability of \$40,000.00, plus penalties and interest, remains for 1998, the only year in question in this proceeding.<sup>2</sup>

---

<sup>2</sup> The auditor concluded that the resident credit and the unincorporated business tax credit denied by the Division in its initial review of petitioners' 1998 return (*see* Finding of Fact "3") were proper and allowable. The impact of this conclusion was to accept the \$242,721.00 liability shown on petitioners' return, as filed, as the correct amount and, as a consequence, to reduce the tax due as shown on the Notice and Demand from \$66,670.00 to \$40,000.00, plus penalties and interest.

**1999**

The auditor's review indicated that petitioners had not filed a return for 1999, but had made one payment by check in the amount of \$200,000.00, verified by DSN S1399928 as received on April 21, 1999, and described by the auditor as "unmatched." This payment will be further described hereinafter.

6. Accompanying the petition in this matter and included as part of the record is a copy of a check, numbered 3688, drawn on the account of petitioner Allan Chapin, in the amount of \$200,000.00. This check, dated December 31, 1998, is payable to "NYS Income Tax" and, in its memo section, states "98 Est." The face of this check reflects the stamped DSN "S1399928," consistent with the unmatched payment listed above. The reverse side of this check, also submitted by petitioners as part of the petition in this matter, contains several sets of stamped numbers, the significance of which is not elaborated upon in the record. However, the stamped numbers "042299" and "04221999" appear on such reverse side, followed by the stamped endorsement "For Deposit Only/Without Prejudice Comptroller State of NY," thus presumably indicating a deposit date of April 22, 1999, i.e., one day after the receipt date of April 21, 1999. Finally, page "8" of the Division's audit report in this matter contains a photocopy of the face of the \$200,000.00 check, together with a photocopy of an accompanying Estimated Income Tax Payment Voucher (Form IT-2105-MN) for 1998. This voucher lists petitioner Allan Chapin's name, address and social security number, indicates a "Total Payment" of \$200,000.00, and is addressed to "NYS Estimated Income Tax, P.O. Box 1195, Albany, NY 12201."<sup>3</sup>

***SUMMARY OF THE PARTIES' POSITIONS***

7. The Division asserts that petitioners have failed to meet their burden of proving that the Notice and Demand is incorrect. In this regard, the Division points to the presumptive correctness of such notice, and maintains that petitioners have offered no information or evidence which

---

<sup>3</sup> An additional line of handwriting follows the address, but is partially obscured and is illegible.

would show that any payments or credits, other than the \$160,000.00 amount applied in reduction of petitioners' liability, should be allowed or applied to 1998. Accordingly, the Division posits it correctly determined an outstanding unpaid tax liability of \$40,000.00 for 1998, that the penalties imposed for failure to timely file, failure to timely pay tax, and failure to timely pay estimated tax for such year were proper, and that petitioners have failed to establish any basis warranting reduction or abatement of such penalties.

8. Petitioners maintain, in contrast, that they have made sufficient payments to eliminate their tax liability for 1998, as well as for the preceding years 1996 and 1997. In this respect, petitioners apparently agree with the auditor's application of the payment of \$160,000.00, received April 17, 1997, so as to eliminate their balance due for 1996. In the same manner, petitioners apparently agree that the \$60,000.00 payment, received September 19, 1997, and the \$20,000.00 payment, received April 28, 1998, should be applied to reduce their 1997 balance due and, further, that the \$160,000.00 payment, received April 20, 1998 (and currently applied against the 1998 balance due), should be applied to reduce their 1997 balance due, such that there would be a resulting tax overpayment of \$533.00 for 1997. Finally, petitioners would have the Division apply the \$200,000.00 payment, received April 21, 1999, against their 1998 balance due, such that there would be a continued tax overpayment of \$533.00.

9. The Division claimed, at hearing, that in order to reconcile petitioners' estimated tax account for 1998 and make the adjustments suggested by petitioners, it would be necessary for petitioners to submit their 1999 return, as well as returns for later years. The parties expressed optimism that this matter could be disposed of via settlement upon petitioners' submission of such returns and any related information concerning payments made, and thus were afforded a period of over seven months, post-hearing, for submission of such later years' information. Despite this extended period of time, petitioners have submitted no information for such later years, with the

exception of an unsigned copy of their Form IT-201 (Resident Income Tax Return) for the year 2000.

### ***CONCLUSIONS OF LAW***

A. As a starting point to resolve this matter, there is no dispute as to the dollar amount of petitioners' State and City personal income tax liability for 1998. Although the Division's initial review of petitioners' return for 1998 resulted in disallowance of two credits as detailed (resident credit and unincorporated business tax credit), the same have, upon subsequent review, been restored. Thus, petitioners' State and City personal income tax liability for 1998 has been accepted by the Division as \$242,721.00. It is also undisputed that such liability was reduced by a New York City school tax credit of \$12.00, and that petitioners paid \$42,709.00 when they filed their return on November 15, 1999, thus leaving a balance due of \$200,000.00. The parties differ most specifically about this balance due, with petitioners maintaining that they made an estimated tax payment of \$200,000.00 for 1998 thus eliminating the balance due. The Division, in contrast, maintains that petitioners' only estimated tax payment for 1998 was their April 20, 1998 payment of \$160,000.00, thus leaving a balance due of \$40,000.00 subject to assessment together with penalties for late filing, late payment and late payment of estimated tax. The Division asserts that the \$200,000.00 payment was not made until April 1999, and cannot be applied against petitioners' 1998 liability, at least until petitioners' 1999 liability and payments have been verified.

B. Pursuant to Tax Law § 651, a New York personal income tax return shall be made and filed on or before April 15<sup>th</sup> following the close of the taxable year, or in this case by April 15, 1999. Tax Law § 657 allows a taxpayer to obtain extensions of the time for filing, the maximum period for which shall not exceed six months. Thus, at most, the filing date for a personal income tax return may be extended to October 15<sup>th</sup> following the close of the taxable year, or in this case

until October 15, 1999. Petitioners' return for the year 1998 was received by the Division on November 15, 1999. There is no evidence in the record to establish that such return was mailed in a timely fashion (i.e., on or before the latest possible extended filing date of October 15, 1999). Thus, petitioners' return for 1998 was not filed in a timely manner.

C. Pursuant to Tax Law § 652, a taxpayer is required to pay any tax due on a return on or before the date fixed for filing such return, determined without regard to any extension of time for filing such return. Thus, the tax due on petitioners' 1998 return was required to be paid on or before April 15, 1999. In this matter, there are three payments potentially having direct impact on the year 1998, to wit, the \$42,709.00 amount paid on November 15, 1999 with the filing of petitioners' return, the \$160,000.00 payment (DSN S1398929) received April 20, 1998 and credited by the Division as an estimated payment against petitioners' 1998 liability, and the \$200,000.00 payment (DSN S1399928) received April 21, 1999 and sought as a credit by petitioners against their 1998 liability.

D. Certain facts are clear with respect to the three payments specified above:

–The \$42,709.00 payment was not made until petitioners' return was filed, late, on November 15, 1999.

–The \$160,000.00 payment was received on April 20, 1998. Although this payment was therefore made slightly *after* the April 15, 1998 due date for the first of four estimated tax installment payment due dates for 1998 (*see* Tax Law § 685[c][1]), such payment was made well *before* the April 15, 1999 due date (Tax Law § 652) for payment of petitioner's tax liability for 1998.

–The \$200,000.00 payment was received on April 21, 1999. There is no evidence in the record to establish that such payment (despite being dated December 31, 1998 on its face) was made in a timely fashion either for estimated tax installment purposes for 1998, or for payment of tax due for the year 1998 (i.e., on or before April 15, 1999 per Tax Law § 652).

In view of these facts, it is clear that the tax due on petitioners' 1998 return (\$242,721.00) was not paid in full on or before the April 15, 1999 payment due date with respect to petitioners' liability per such return (computed without regard to any extensions of time for filing such return).

E. Pursuant to Tax Law § 685(a)(1) and (2), penalties for late filing and late payment, respectively, are imposed based upon a calculation whereby a certain percentage is applied to any underpayment of tax as shown on the late-filed return. For late filing, a penalty of five percent of the amount of tax due is imposed "if the failure is for not more than one month, with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate" (Tax Law § 685[a][1][A]). For late payment, a penalty is imposed of "one-half of one percent of the amount [shown due on the return] if the failure is not for more than one month, with an additional one-half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate" (Tax Law § 685[a][2]).

F. Tax Law § 685(a)(1) and (2) further provides that penalties for late filing and late payment may be abated if a taxpayer is able to show that the failure to timely file and pay was due to reasonable cause and not due to willful neglect (*see* 20 NYCRR former 107.6). However, the Tax Appeals Tribunal has held that, in the first instance, the imposition of penalty is mandatory and not discretionary on the part of the Division (*Matter of MCI Telecommunications Corp.*, Tax Appeals Tribunal, January 16, 1992, *confirmed* 193 AD2d 978, 598 NYS2d 360). In light of the filing and payment dates set forth above, it is clear that petitioners' return was filed late and payment of tax was not made, in full, by April 15, 1999, as required. Therefore, the imposition of penalties pursuant to Tax Law § 685(a)(1) and (2), for late filing and late payment, were in the first instance properly imposed on petitioners. In turn, there is no evidence in the record from

which it could be concluded that petitioners' late filing and late payment for 1998 occurred as the result of reasonable cause such that the penalties properly imposed should be abated.

G. Tax Law § 685(c)(1) sets forth specific due dates for the payment of estimated tax installments, providing that "[t]here shall be four required installments for each taxable year, due on April fifteenth, June fifteenth and September fifteenth of such taxable year and on January fifteenth of the following taxable year." This section also provides for the imposition of penalties or "additions to tax" when an installment is not made in a timely manner (*id.*, *see also* 20 NYCRR 185.3).<sup>4</sup>

H. There are two payments, as described, which are relevant to the issue of penalties for late payment of estimated tax for 1998, to wit, petitioners' payment of \$160,000.00 (DSN S1398929) received April 20, 1998, and petitioners' payment of \$200,000.00 (DSN S1399928) received April 21, 1999. This latter payment, though clearly received well after all of the payment due dates for the required installments of estimated tax for 1998, was labeled as an estimated tax payment for 1998 (*see* Finding of Fact "6") and thus must be evaluated in light of such label.

I. The Division, in its audit report, recognized the \$160,000.00 payment as "the only payment made for Est tax purposes for 1998," and reduced petitioners' balance due for 1998 by such amount. Given the lack of any evidence that such payment was made at any time earlier than the noted April 20, 1998 receipt date, it is appropriate that the Division applied such payment against petitioners' balance due for 1998, and it is also appropriate to accept and use such April 20, 1998 payment date for purposes of computing estimated tax penalties for 1998.

---

<sup>4</sup> Tax Law § 685(d) describes certain specific circumstances under which no penalty will be imposed for failure to pay estimated income tax by the required installment due dates. None of these circumstances are presented under the facts of this case.

Petitioners' payment of \$200,000.00 was made via a check dated December 31, 1998. Notwithstanding such date on the face of the check, this payment was not received by the Division until April 21, 1999. Petitioners, for their part, have supplied no evidence to establish that this payment was made at any time prior to such date, and thus it is appropriate to accept such April 21, 1999 date for purposes of computing the penalties.<sup>5</sup>

J. Finally, the Division has refused to apply the \$200,000.00 payment against petitioners' balance due for 1998. This refusal fails to recognize and acknowledge that such payment was clearly denominated as a payment against petitioners' 1998 liability, as evidenced by the notation "98 Est" in the memo section of the payment check and, more directly, by the fact that the payment was accompanied by Form IT-2105-MN, the Estimated Tax Payment Voucher, for 1998. By these notations, petitioners evidenced their intent that such \$200,000.00 payment was intended to be applied against their liability for 1998. While the Division is not bound to any particular application protocol when payments are received from a taxpayer without any information or instruction directing where the same are to be applied, taxpayers nonetheless do have the right to provide information directing or specifying how payments are to be applied and the Division may not ignore a taxpayer's directive that a particular payment is to be applied to a particular liability

---

<sup>5</sup> Petitioners would move the \$160,000.00 payment from 1998 to 1997. In this respect, it is possible that such payment was made in a manner similar to the \$200,000.00 payment, to wit, that there was some notation on the face of the check, or that it was accompanied by a Form IT-2105-MN, or that there was some other directive indicating that it was intended as a payment of an estimated tax installment for 1997. However, there is no evidence in the record showing such a filing or any written direction that the \$160,000.00 payment was to be applied to or credited against any particular year. In fact, the auditor's statement that such payment was petitioners' "only payment for estimated tax for 1998" indicates that the same may have been specified in some manner at the time the payment was made. In any event, and absent any evidence of any specific payment direction, the Division was free to apply such payment in a manner of its own choosing (*see* Conclusion of Law "J"). Its treatment of such payment as an estimated tax installment for 1998 and its application of such amount against petitioners' liability (balance due) for 1998, the year in which such payment was received, absent any evidence in the record to show a different application was required, was reasonable. In the same manner, while petitioners' \$20,000.00 payment (DSN S7308462) was received on April 28, 1998, the record includes no evidence of any directive from petitioners concerning its application. Thus although received in 1998, the Division is free to apply the same as it chooses (*id.*). It may be that such payment was accompanied by a directive that it represented an estimated payment for 1997, thus supporting the Division's proposal to apply the same to petitioners' 1997 balance due.

or period (*Matter of Myer*, Tax Appeals Tribunal, May 17, 1990). Based on the evidence in the record in this case (and unlike the evidence with respect to petitioners' \$160,000.00 payment as described above), it is clear that petitioners' \$200,000.00 payment, received April 21, 1999, was to be applied to their 1998 personal income tax liability, and the Division is directed to apply such payment against petitioners' balance due for 1998.<sup>6</sup>

K. In summary, the Division's acceptance of petitioners' \$160,000.00 payment, received April 20, 1998, as an estimated tax installment for 1998 and its application of the same against petitioners' 1998 personal income tax liability is sustained. Petitioners' request to "move and apply" such payment to 1997, absent any evidence of a directive to do so having accompanied such payment, is denied. The Division is further directed to apply petitioners' \$200,000.00 payment, received April 21, 1999, against petitioners' 1998 personal income tax liability. Finally, the Division's assessment of penalties against petitioners for late filing of their return, late payment of tax due, and late payment of estimated tax, are to be recalculated according to the filing and payment received dates specified herein, and such penalties, as recalculated, are sustained.

L. The petition of Allan Chapin and Janet Johnson is hereby granted to the extent that the Division is to recalculate its July 7, 2000 Notice and Demand so as to reflect application of petitioners' April 21, 1999 payment of \$200,000.00 against petitioners' personal income tax liability for 1998, but is otherwise denied, and the Notice and Demand, as so modified and

---

<sup>6</sup> Although denominated an estimated tax payment for 1998, the April 21, 1999 date of receipt leaves such payment well beyond the installment due date for estimated tax payments for 1998, a fact which impacts the computation of the late payment (late payment of tax and late payment of estimated tax) penalties.

including any penalties for late filing, late payment, and failure to timely pay estimated tax, is sustained.<sup>7</sup>

DATED: Troy, New York  
September 23, 2004

/s/ Dennis M. Galliher  
ADMINISTRATIVE LAW JUDGE

---

<sup>7</sup> It is recognized that the application of petitioners' payments of \$160,000.00 and \$200,000.00 will, even after the imposition of penalties, result in an overpayment for 1998. Inasmuch as this proceeding involves only the resolution of the Notice and Demand concerning petitioners' liability for 1998, no position is expressed herein as to the proper application of any such resulting overpayment.